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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,462	05/09/2001	Trevor Neil Day	7943M	4314

27752 7590 12/03/2003

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER
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CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/831,462

Applicant(s)

DAY ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-17, 226-48 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-17, 226-48 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or selection requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 is indefinite in reciting a trademark or tradename in a claim. (In re Shepard, 138USPQ148 and Ex parte Simpson, 218 USPQ 1020).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gaffar et al (4,808,401, column 2) or Gaffar et al (4,889,712).

Both Gaffar et al patents disclose chewing gum including ~~water~~<sup>water</sup> soluble and water insoluble components, polymeric surfactant, e.g. glossy polyphosphate or polyphosphate, and metallic ions, e.g. zinc. Surface conditioning effects as claimed ~~are~~<sup>are</sup> inherently produced ~~when~~<sup>when</sup> an individual chews either gum since a polymeric surfactant is present therein, as claimed by applicant. Any differences that may exist between applicant's chewing gum and the chewing gum in either patent are deemed to be obvious.

7. Claims 6 and 8-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaffar et al (4,808,401).

The chewing gum components in Gaffar et al are present in amounts as claimed by applicant.

8. Claims 7, 17 and 26-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaffar et al (4,808,401).

Coated chewing products (claim 7) are conventional. Finding the optimum polyphosphate particle size (claims 17 and 29-36), optimum aqueous solubility (claims 17 and 40-42) and optimum polyphosphate ~~length~~<sup>chain</sup> length and hardness (claims 37-39, 43 and 44) would require nothing more than routine experimentation by one reasonably skilled in this art.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chow et al, Miskewitz and Eis et al show chewing gums containing polyphosphates.

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10.

Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can generally be reached on Tuesday--Friday from 10 a.m. to 7:30 p.m. and on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh  
November 28, 2003

  
ARTHUR L. CORBIN  
PRIMARY EXAMINER  
12-1-03